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Plant Patent Application
Serial No. 09/880,953
Attorney Docket No.: 4194-030267

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Group Art Unit 1661

FAX RECEIVED

In re Application of

MAY 20 2003

Guennadi EREMIN

Prunus Plant Named 'VSL-2'

PETITIONS OFFICE

Serial No. 09/880,953

Filed January 11, 2002

Examiner - Not Yet Assigned

Pittsburgh, Pennsylvania
May 20, 2003

PETITION UNDER 37 C.F.R. § 1.182

VIA FACSIMILE 703-308-6916 (12 PAGES)

Ms. Gena Jones
Office of Petitions/Office of Patent Legal Administration
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

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Dear Ms. Jones:

Applicant respectfully petitions for a filing date pursuant to 37 C.F.R. § 1.182 in the above-identified application. A new Declaration and Power of Attorney, the Petition Fee, and the Filing Fee are submitted herewith.

I hereby certify that this correspondence is being faxed to Gena Jones (Office of Petitions) at the United States Patent and Trademark Office at 703-308-6916 on May 20, 2003.

Theresa Ulinski

(Typed name of person faxing papers)

Signature

05/20/2003

Date

Adjustment date: 07/16/2003 AKELLEY
02/06/2003 SDIRETA1 00000009 09880953
01 FC:8025 -130.00 OP
07/16/2003 AKELLEY 00000027 230650 09880953
01 FC:2003 130.00 DA 130.00 OP

TIMELINE

1. The above-identified application was filed *pro se* on June 15, 2001 by a plant breeding company (Varieties International of Lafayette, Oregon) on behalf of the Applicant, a citizen of Russia. The patent application packet contained the following: Plant Patent Application Transmittal, Fee Transmittal and the fee of \$245.00, Plant Patent Application Declaration, Statement Claiming Small Entity Status, Plant Color Coding Sheet, and two (2) copies of the Specification and Claim. The packet did not contain a drawing.

2. A Notice of Incomplete Nonprovisional Application was mailed to Applicant on August 17, 2001. The Notice indicated that a filing date had not been accorded to the application because the application was deposited without drawings. The Notice requested drawings and a new Declaration and gave a two (2) month non-extendable period to reply.

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3. Neither of the Applicant or Varieties International has any copies of the application or other documents relating to this application in their files and the assistant who helped file the application is no longer in the employ of Varieties International. All documents referenced herein are copies from the United States Patent and Trademark Office file. Attachment A is a copy of a letter dated January 3, 2002 from Applicant's assistant along with a photograph of the claimed plant and a description thereof – sent to the United States Patent and Trademark Office that received a date stamp at the Office of Initial Patent Examination on January 11, 2002. The January 3, 2002 letter and enclosures demonstrate that the *pro se* Applicant complied with the requests in the Notice of Incomplete Nonprovisional Application. In the letter, Applicant even provided authorization to use a credit card for any additional fees required by the Patent Office.

4. According to the Bib Datasheet in Attachment B, the application was given a filing date of January 11, 2002 and is believed to have been sent to the Plant Patent

(W0059808.1)

Examining Group (Group 1600) for examination. However, Applicant believes it is at this point that Varieties International was contacted by Examiner Wendy Haas to request additional photographs of the rootstock in bloom, although the exact timing of this request is unclear and not identifiable from the file history. Applicant waited for the rootstock to bloom, took additional photos and sent them in. At this point, however, Applicant was told that these photographs were submitted too late.

5. According to a telephone conversation on or around March 6, 2003 between the undersigned and Doshie E. Day of the Office of Initial Patent Examination, Ms. Day remembers this case and the other three (3) similar cases of Applicant quite well. Ms. Day stated that the Plant Patent Examining Group sent the subject application back to her office and asked that she revoke the filing date of January 11, 2002 because the photograph was not timely submitted. This was not the case since the original photograph was timely filed.

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6. Over a year later, Applicant was surprised to receive a Notice of Abandonment dated January 23, 2003 for failure to reply in a timely matter to the Notice of Incomplete Nonprovisional Application for the subject application. Applicant and Varieties International sincerely believed that they had successfully complied with all of the requirements for filing the subject application to the best of their knowledge and ability.

7. Applicant (via Varieties International) immediately contacted The Webb Law Firm to assist in this matter. In the absence of any documentation related to the application, including the application itself, another Declaration and Power of Attorney form was drafted, sent to the breeder in Russia for execution, and submitted to the United States Patent and Trademark Office.

8. After numerous telephone conversations with personnel in the Petitions Branch, Ms. Gena Jones (Office of Patent Legal Administration) requested submission of a

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new Declaration executed by the Russian breeder that specifically refers to the dates on which the drawings and specification were filed. Attached herewith is the new Declaration that complies with Ms. Jones' request.

REQUEST

All requirements to accord a filing date were complied with on January 11, 2002. Applicant and Varieties International tried to the best of their knowledge and ability to complete the subject application in a timely fashion. Applicant respectfully petitions for a filing date of January 11, 2002 and requests that the subject application be reinstated.

Date: May 20, 2003

Respectfully submitted,

WEBB ZIESENHEIM LOGSDON
ORKIN & HANSON, P.C.

By Patricia A. Olosky
Patricia A. Olosky
Registration No. 53,411
Attorney for Applicant
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Pittsburgh, PA 15219-1818
Telephone: 412-471-8815
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E-Mail: webblaw@webblaw.com

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United States Patent & Trademark Office
Commissioner For Patents
Washington, D.C. 20231

COPY OF PATENT
ORIGINAL

January 3, 2002

Dear United States Patent & Trademark Office:

If I did not pay enough with the check I am enclosing in the amount of \$460.00 you are authorized to charge the remaining amount owed to my credit card account. My credit card account number is [REDACTED] 0001 the expiration date is 09/02. The name that appears on this credit card is Cheryl A. Erickson.

X Cheryl A. Erickson
Signature of cardholder

Sincerely,

Todd A. Erickson
Todd A. Erickson
Varieties International

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ATTACHMENT
A

09880953.011102

ERS
ED**DESCRIPTION**

This is a picture of a Prunus Plant VSL-2 planted in the field. The plant is one year old and ready for grafting. This photo was taken in McMinnville, Oregon. The laser copies were all printed from original photographs. The colors are the best rendered colors we could achieve using photography equipment and laser printing equipment.

**ATTACHMENT
A**

201110-ES608860



ATTACHMENT
A

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U. S. Patent and Trademark Office, U. S. DEPARTMENT OF COMMERCE
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Certificate of Mailing under 37 CFR 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Assistant Commissioner for Patents
Washington, D.C. 20231

on 1/11/02
Date

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Lindsay Erickson
Signature

Lindsay Erickson
Typed or printed name of person of signing Certificate

Note: Each paper must have its own certificate of mailing, or this certificate must identify each submitted paper.

Notice of Incomplete Nonprovisional Application
Confirmation NO. 6002 (2 copies) Photographs
of plant (2 copies) Description of plant photographs
(2 copies) check (1) Authorization for credit
card use letter (1 copy)

Burden Hour Statement: This form is estimated to take 0.03 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U. S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

ATTACHMENT
A

09880953-01102

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MAY 20 2003

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Page 1 of 1



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Bib Data Sheet

CONFIRMATION NO. 6002

SERIAL NUMBER 09/880,953	FILING DATE 01/11/2002 RULE	CLASS PLT	GROUP ART UNIT 1661	ATTORNEY DOCKET NO.
APPLICANTS Guennadi Eremin, Krymsk, RUSSIAN FEDERATION;				
** CONTINUING DATA ***** with 9/15/02				
** FOREIGN APPLICATIONS ***** with 9/15/02				
IF REQUIRED, FOREIGN FILING LICENSE GRANTED.. SMALL ENTITY ** ** 03/18/2002				
Foreign Priority claimed 35 USC 119 (a-d) conditions met	<input type="checkbox"/> yes <input checked="" type="checkbox"/> no <input type="checkbox"/> yes <input checked="" type="checkbox"/> no <input type="checkbox"/> Met after Allowance	STATE OR COUNTRY RUSSIAN FEDERATION	SHEETS DRAWING 1	TOTAL CLAIMS 1
Verified and Acknowledged	Examiners Signature <i>WCH</i> Initials	INDEPENDENT CLAIMS 1		
ADDRESS Ms. Shannon K. Reeser Varieties International P.O. Box 763 Lafayette, OR 97127				
TITLE Prunus plant named 'VSL-2'				
FILING FEE RECEIVED 320	FEES: Authority has been given in Paper No. _____ to charge/credit DEPOSIT ACCOUNT No. _____ for following:		<input type="checkbox"/> All Fees <input type="checkbox"/> 1.16 Fees (Filing) <input type="checkbox"/> 1.17 Fees (Processing Ext. of time) <input type="checkbox"/> 1.18 Fees (Issue) <input type="checkbox"/> Other _____ <input type="checkbox"/> Credit	

ATTACHMENT
B